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# A BILL FOR AN ACT

RELATING TO THE BANK OF THE STATE OF HAWAII.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 PART I

2 SECTION 1. (a) The department of commerce and consumer  
3 affairs, in conjunction with:

4 (1) The department of accounting and general services;

5 (2) The department of agriculture;

6 (3) The department of the attorney general;

7 (4) The department of budget and finance;

8 (5) The department of human resources development;

9 (6) The department of land and natural resources;

10 (7) The Hawaii housing finance and development  
11 corporation;

12 (8) The agribusiness development corporation; and

13 (9) The public land development corporation;

14 shall conduct a comprehensive review of the State's laws  
15 relating to financial institutions, mortgage lending, housing  
16 development, agricultural development, and land use for the  
17 purpose of developing proposed legislation to establish a bank  
18 of the State of Hawaii.



1 (b) The division of financial institutions of the  
2 department of commerce and consumer affairs shall be the lead  
3 agency charged with the responsibility of coordinating the  
4 review required under subsection (a).

5 SECTION 2. The commissioner of financial institutions  
6 shall submit a status report of the review to the legislature on  
7 a semi-annual basis. The commissioner of financial institutions  
8 shall submit the first progress report, along with findings and  
9 recommendations, to the legislature no later than twenty days  
10 prior to the convening of the 2013 regular session. The  
11 commissioner of financial institutions shall submit the final  
12 report no later than twenty days prior to the convening of the  
13 2014 regular session.

14 SECTION 3. The final report shall include but not be  
15 limited to:

- 16 (1) A graduated schedule of state funds to be transferred  
17 to the bank of the State of Hawaii from financial  
18 institutions that are serving as depositories for the  
19 State; and
- 20 (2) Proposed legislation to establish a short-term  
21 purchase program for distressed residential properties  
22 encumbered by problematic mortgages.



1 SECTION 4. The attorney general shall transfer \$  
2 for fiscal year 2012-2013, in other funds received as part of  
3 the multi-state settlement agreement with mortgage lenders, to  
4 the compliance resolution fund established pursuant to section  
5 26-9(o), Hawaii Revised Statutes.

6 SECTION 5. There is appropriated out of the compliance  
7 resolution fund the sum of \$ or so much thereof as may  
8 be necessary for fiscal year 2012-2013 for the purpose of  
9 conducting the comprehensive review of the State's laws as  
10 provided in this part.

11 The sum appropriated shall be expended by the department of  
12 commerce and consumer affairs for the purposes of this Act.

13 PART II

14 SECTION 6. (a) The Hawaii housing finance and development  
15 corporation shall establish an interim purchase program for  
16 distressed residential properties encumbered by problematic  
17 mortgages for the purpose of acquiring title to residential  
18 property encumbered by certain mortgages. The legislature  
19 intends for the interim purchase program to address problematic  
20 mortgages until the bank of the State of Hawaii is established  
21 pursuant to law.



1 Under the purchase program, the Hawaii housing finance and  
2 development corporation may purchase residential property  
3 occupied by one or more persons who hold title to the property  
4 if the mortgagee's lien and its supporting documentation fail to  
5 adequately demonstrate that the mortgagee has the right to  
6 collect on the mortgagor's indebtedness or that the mortgagee  
7 has legal authority to foreclose on a property.

8 (b) An owner-occupant who has been using the subject  
9 property as a primary residence for a continuous period of not  
10 less than two hundred days immediately prior to the date when  
11 the owner-occupant received a letter of default on the mortgage  
12 or notice that the owner-occupant's application for a mortgage  
13 modification under a federally sponsored program has been denied  
14 shall be entitled to apply for consideration in the purchase  
15 program. The application shall conform to rules adopted by the  
16 corporation and shall include copies of:

- 17 (1) The three most recent billing statements for the  
18 mortgage loan;
- 19 (2) The promissory note;
- 20 (3) The mortgage agreement; and



1 (4) The letter of default or notice that the owner-  
2 occupant's application for a mortgage modification  
3 under a federally sponsored program has been denied.

4 (c) Within forty-five days of receiving an application  
5 pursuant to subsection (b), the Hawaii housing finance and  
6 development corporation shall review the application and  
7 determine whether the property shall be accepted for further  
8 evaluation.

9 If the corporation accepts the property for further  
10 evaluation, within the forty-five day review period, the  
11 corporation shall notify the mortgagee and its agents on record  
12 at the bureau of conveyances, including all affiliates that may  
13 be reported pursuant to any affiliate statement recorded  
14 pursuant to sections 454M-5(a)(4) and 667-58(a), Hawaii Revised  
15 Statutes, and any entities purporting to represent the  
16 mortgagee, as reflected in the mortgage statements provided in  
17 the application. The notice shall describe the purchase program  
18 and include details about the program's requirements, as set  
19 forth by rules adopted by the corporation in accordance with  
20 chapter 91, Hawaii Revised Statutes.

21 If the corporation declines to accept the property for  
22 further evaluation, the corporation shall provide written



1 notification to the applicant stating the reasons for that  
2 determination within the forty-five day review period.

3 (d) Within thirty days of receiving notice under  
4 subsection (c), the mortgagee shall submit a written response to  
5 the corporation. The response shall include:

6 (1) A copy of the promissory note, signed by the  
7 mortgagor, including any endorsements, allonges,  
8 amendments, or riders to the note evidencing the  
9 mortgage debt and the mortgagee's legal right to  
10 enforce the note under section 490:3-203(b) and  
11 articles 3 and 9 of the Uniform Commercial Code  
12 generally;

13 (2) A copy of the mortgage document and any amendments,  
14 riders, or other documentation evidencing the  
15 mortgagee's right to foreclose and interest in the  
16 property, including any interest as a successor,  
17 transferee, or assignee; and

18 (3) A certification under penalty of perjury describing  
19 the nature of the mortgagee's legal ownership of the  
20 mortgage loan that includes:

21 (A) Information about the chain of possession and the  
22 transfer between all holders in due course of the



1 mortgage note from the origination of the  
2 mortgage loan to the present mortgagee; provided  
3 that descriptions of each transaction that  
4 effectuated a transfer of the mortgage note shall  
5 include:

6 (i) The names of the individuals involved;

7 (ii) The principal employers and the employers'  
8 state of incorporation for the individuals  
9 involved;

10 (iii) The authority conferred to the individuals;

11 (iv) The dates on which the mortgage note was  
12 negotiated; and

13 (v) The manner in which the note was endorsed;

14 (B) Information about the assignment or transfer of  
15 each mortgage agreement, including:

16 (i) The entities assigned the rights to enforce  
17 the mortgage agreement;

18 (ii) The individuals who signed documentation to  
19 effectuate the transfer and their titles,  
20 principal employers, and principal  
21 employers' state of incorporation;



1 (iii) A description of the authority conferred to  
2 the individuals;

3 (iv) The dates on which the mortgage agreements  
4 were assigned or transferred;

5 (v) The manner of the assignment or transfer;  
6 and

7 (vi) A description of the extent to which the  
8 mortgage agreement transfers or assignments  
9 coincided with the negotiations or transfers  
10 of the mortgage note; and

11 (C) The bureau of conveyances document number for  
12 every assignment or transfer of the mortgage note  
13 or mortgage agreement recorded and a copy of each  
14 filing.

15 The mortgagee's response shall provide an explanation for any  
16 failure to provide any of the items enumerated in this  
17 subsection.

18 Failure to respond to a notice received under subsection  
19 (c) within seventy-five days shall result in an automatic  
20 referral to the department of the attorney general and the  
21 department of commerce and consumer affairs for investigation  
22 pursuant to subsection (f), as well as to the attorney general





1 of the state within which the mortgagee is incorporated. An  
2 automatic referral under this subsection shall operate as an  
3 automatic stay on any foreclosure action, pursuant to subsection  
4 (f).

5 (e) At any time after receiving a notice of acceptance  
6 from the housing and finance and development corporation under  
7 subsection (c), a mortgagee may elect to participate in the  
8 purchase program as a qualified mortgagee, pursuant to rules  
9 adopted by the corporation in accordance with chapter 91, Hawaii  
10 Revised Statutes.

11 (f) Within forty-five days of receiving the mortgagee's  
12 response pursuant to subsection (d), the corporation shall  
13 determine whether to refer the subject mortgage loan to the  
14 department of the attorney general, the department of commerce  
15 and consumer affairs, and the attorney general of the state  
16 within which the mortgagee is incorporated for a legal  
17 investigation and possible action to determine the mortgagee's  
18 legal authority to collect on the mortgage indebtedness and  
19 enforce the mortgage agreement; provided that if no document was  
20 filed or recorded with respect to a given assignment or transfer  
21 of the mortgage note or mortgage agreement, or the filing or



1 recording occurred more than months after the assignment or  
2 transfer, the corporation shall make the referral.

3 Written notification of the referral for legal  
4 investigation pursuant to this section shall operate as a stay  
5 of any foreclosure proceeding under chapter 667, Hawaii Revised  
6 Statutes, and may be filed in the office of the assistant  
7 registrar of the land court under chapter 501, Hawaii Revised  
8 Statutes, or recorded in the bureau of conveyances under chapter  
9 502, Hawaii Revised Statutes, or both, as appropriate.

10 Upon a stay pursuant to this subsection, a mortgagee shall  
11 not foreclose upon a mortgage subject to the stay until the  
12 department of the attorney general or the department of commerce  
13 and consumer affairs releases the stay by recording a release at  
14 the bureau of conveyances, or as otherwise provided by law or  
15 court order.

16 If the corporation determines that a referral for  
17 investigation is not warranted, the corporation shall promptly  
18 notify the mortgagee and the owner-occupant applicant before the  
19 end of the forty-five day period that the subject property is no  
20 longer being evaluated by the purchase program. The notice may  
21 be filed in the office of the assistant registrar of the land  
22 court under chapter 501, Hawaii Revised Statutes, or recorded in



1 the bureau of conveyances under chapter 502, Hawaii Revised  
2 Statutes, or both, as appropriate.

3 Nothing in this subsection shall be construed as preventing  
4 a mortgagee from filing a claim in circuit court to lift the  
5 stay by order.

6 (g) Terms and conditions for owner-occupants and qualified  
7 mortgagees participating in the purchase program shall be set  
8 forth by rules adopted by the corporation in accordance with  
9 chapter 91, Hawaii Revised Statutes; provided that:

- 10 (1) If the mortgagee agrees to participate in the purchase  
11 program, the stay on any foreclosure process and the  
12 referral for investigation made pursuant to subsection  
13 (f) shall be withdrawn;
- 14 (2) If the owner-occupant declines the offer purchase  
15 price under paragraph (3), the stay on any foreclosure  
16 process and the referral for investigation made  
17 pursuant to subsection (f) shall be withdrawn;
- 18 (3) Upon agreement by the owner-occupant and the qualified  
19 mortgagee, the corporation may offer to purchase the  
20 subject property from the owner-occupant for a price  
21 that shall not exceed seventy-five per cent of the



- 1 principal balance due on the mortgage loan at the time  
2 of the mortgagee's election to participate;
- 3 (4) The amount of the purchase price of the property shall  
4 be paid to the qualified mortgagee and shall be deemed  
5 to fully satisfy the subject mortgage debt and release  
6 the lien held by the mortgagee;
- 7 (5) The former owner-occupant shall be permitted to rent  
8 the property for a minimum period of six months from  
9 the date of transfer at a rate that shall be based  
10 upon an independent appraisal of the fair-market rent  
11 for the property;
- 12 (6) The former owner-occupant shall be required to consult  
13 with an approved housing counselor or an approved  
14 budget and credit counselor as defined under chapter  
15 667, Hawaii Revised Statutes;
- 16 (7) Upon the recommendation of an approved housing  
17 counselor or an approved budget and credit counselor,  
18 the corporation may offer to sell the subject property  
19 back to the former owner-occupant for a price that  
20 shall not exceed ninety per cent of the prior  
21 mortgagee's mortgage loan balance; provided that the  
22 payment plan, which may or may not include a mortgage,



1 is reasonable and affordable to the owner-occupant;

2 and

3 (8) The owner-occupant shall:

4 (A) Be prohibited from selling the property for a

5 period of months after repurchasing it

6 pursuant to paragraph (7); and

7 (B) Agree that, upon any resale of the property to a

8 subsequent purchaser, the owner-occupant shall

9 pay the corporation a share of the appreciation

10 represented by the proportion of the price at

11 which the owner-occupant purchased the property

12 from the corporation to the subsequent sale

13 price; provided that the property is sold for

14 fair market value at a price approved by the

15 corporation.

16 (h) Pursuant to rules adopted by the corporation in

17 accordance with chapter 91, Hawaii Revised Statutes, the

18 corporation shall provide grants to approved housing counselors

19 and approved budget and credit counselors, as defined under

20 chapter 667, Hawaii Revised Statutes, that are based within the

21 State for the purposes of subsection (g).



1 PART III

2 SECTION 7. Effective , the bank of the State of  
3 Hawaii shall be deemed licensed to engage in the business of a  
4 Hawaii financial institution.

5 SECTION 8. On , the director of finance shall  
6 deposit with the bank of the State of Hawaii a sum of not less  
7 than \$ of state funds that were held by one or more  
8 private financial institutions on , on behalf of the  
9 State.

10 SECTION 9. Effective , the director of finance  
11 shall ensure that not less than fifty per cent of all state  
12 funds required to be held in depositories on behalf of the State  
13 shall be deposited in the bank of the State of Hawaii.

14 SECTION 10. Effective , the director of finance  
15 shall ensure that not less than seventy-five per cent of all  
16 state funds required to be held in depositories on behalf of the  
17 State shall be deposited in the bank of the State of Hawaii.

18 SECTION 11. This Act shall take effect on July 1, 2212.



**Report Title:**

Financial Institutions; State Bank; Hawaii Housing Finance and Development Corporation; Mortgage Foreclosure; Appropriation

**Description:**

Directs Department of Commerce and Consumer Affairs to conduct a comprehensive review of relevant state laws to develop legislation to establish the bank of the State of Hawaii. Appropriates funds to conduct the review. Directs the Hawaii housing and finance and development corporation to establish and operate an interim purchase program for distressed residential properties encumbered by problematic mortgages until the bank of the State of Hawaii is operational. Establishes minimum percentages of state funds that shall be deposited in the bank of the State of Hawaii. Effective July 1, 2212. (HB2103 HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

